

STATE OF ALASKA

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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U.S. Fish and Wildlife Service
Office of Subsistence Management
1011 East Tudor Road, MS 121
Anchorage, AK 99503-6199
Attn: Theo Matuskowitz

Dear Mr. Matuskowitz:

The Citizens' Advisory Commission on Federal Areas has reviewed the proposed revisions to the regulations found at 36 CFR Part 242 and 50 CFR Part 100 §§ __.10, __.18, and __.19 (74 FR 52712). We offer the following comments.

The commission supports the stated intent of the proposed revisions which includes clarifying the Federal Subsistence Board's process for accepting and addressing special action requests, updating public notice requirements, and clarifying the role of the regional councils with respect to special action requests. We are concerned, however, that the revisions go beyond simply clarifying process and propose to expand the scope of authority of the Federal subsistence Board (FSB) beyond what is intended in ANILCA.

§ __.10 Federal subsistence Board

Under existing regulations at § __.10(d)(4)(vi) the FSB is authorized to "Close public lands to the non-subsistence taking of fish and wildlife." And under existing § __.10(d)(4)(vii) to "Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents."

The proposed revisions to these two sections would authorize the FSB to not only restrict the non-subsistence take of fish and wildlife on federal public lands, but also "modify the requirements regarding the taking of fish and wildlife for nonsubsistence uses." While the supplementary information accompanying the proposed regulations offers no explanation for this change, it appears this proposed revision would improperly extend the authority of the FSB to regulate methods and means of harvest, time and harvest restrictions, as well as access for all users that are fishing, hunting, or trapping on federal public lands and waters under State regulations.

We find nothing in either ANILCA or the current regulations which provides authority for the Federal Subsistence Board to supplant State regulations for methods and means of harvest, bag limits, access, or other aspects governing take of fish and wildlife or to preempt the State's sovereign fish and wildlife management authority for non-federal qualified users on the public lands.

In fact, ANILCA section 1314(a) clearly states:

Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in Title VIII.

In ANILCA Section 815, Congress said:

Nothing in this chapter shall be construed as –

...

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section § 816, to continue subsistence uses of such populations, or pursuant to other applicable law....

In ANILCA Section 816, Congress specified:

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. (emphasis added)

ANILCA Sections 815 and 816 provide the FSB with the authority to close or restrict an area of public land to non federal qualified users, but not to implement other restrictions.

We suggest that the existing regulation in § __.10(d)(4)(vi) be revised to read as follows:

(vi) Close, open, or limit areas of public lands for the take of fish and wildlife for nonsubsistence uses when necessary for the conservation of healthy populations of fish or

wildlife, to continue subsistence uses of fish or wildlife, or for reasons of public safety or administration;

Consistent with the above, the phrase “..or restrict the requirements for take for nonsubsistence uses..” should be deleted in the proposed § __.19(a) and § __.19(b).

§ __.19 Special Actions

Existing regulations in § __.19(d) state “...Prior to implementing an emergency action, the Board shall consult with the State.”

The proposed revision in § __.19(a) inexplicably drops the requirement that the FSB consult with the State before implementing an emergency special action. The required consultation for an emergency special action should be retained, just as it is in § __.19(b) for a temporary special action. The State must be consulted in all instances prior to implementing an emergency or temporary action.

Existing regulations in § __.19(d) also require that the FSB “...shall, in a timely manner, provide notice via radio announcement or personal contact of the emergency action and shall publish notice and reasons justifying the emergency action in newspapers of any area affected, and in the Federal Register thereafter .

The proposed regulations in § __.19(d) would require the FSB provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management (OSM) website. And “when appropriate” notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. We would submit that it is always appropriate for agencies to notify the public of their actions by the most direct and effective means available.

In addition to the requirement that any changes be published on the OSM website, the revised regulations in § __.19(d) should also state: “Notice shall also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties.” We appreciate the intent of the changes to bring public notice requirements “into line with the practices of the digital age,” but many users of the public lands do not have ready access to the OSM website. Consequently, other means of public notification should always be required, not optional.

We appreciate the opportunity to comment. If we need to clarify any of our comments or provide additional information, please contact our office.

Sincerely



Stan Leaphart
Executive Director